

PATENT



Attorney Docket No. BERL020/04US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#4

In re application of Urry	)	Examiner: Not Assigned Yet
	)	
Serial No. 09/841,321	)	Art Unit: Not Assigned Yet
	)	
Filed: April 23, 2001	)	<u>PETITION FOR FILING DATE AND</u>
	)	<u>RESPONSE TO NOTICE OF</u>
For: INJECTABLE IMPLANTS FOR	)	<u>INCOMPLETE NONPROVISIONAL</u>
TISSUE AUGMENTATION AND	)	<u>APPLICATION</u>
RESTORATION	)	

Assistant Commissioner for Patents  
Washington, D.C. 20231

PETITION FOR FILING DATE  
AND  
RESPONSE TO NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION

Sir:

Applicant petitions for the grant of a filing date of April 23, 2001, for the above-identified application. On that date, Applicant provided the U.S. Patent and Trademark Office with all of the documents necessary to obtain a serial number and filing date as required under 35 USC §113 and 37 CFR §1.53.

This petition is in response to the "Notice of Incomplete Nonprovisional Application" (copy enclosed), where the Patent Office has indicated non-receipt of the drawings referred to on pages 7 and 8 of the specification. A duplicate set of these drawings is included as Exhibit A.

**A. Applicant is entitled to the April 23, 2001 filing date since the drawings were deposited with the Patent Office.**

Applicant asserts that the drawings were indeed deposited with the Patent Office with the application on April 23, 2001. As evidence of such deposit, Applicant encloses a copy of the Return Receipt Postcard as Exhibit B. The Return Postcard lists all of the documents deposited with the Patent Office on April 23, 2001. The Return Postcard indicates that there were 6 sheets of formal drawings enclosed. The Patent Office made no indication on the face of the postcard that the drawings were missing, thereby acknowledging their receipt.

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**B. In the alternative, Applicant is entitled to the April 23, 2001 filing date since the drawings are not essential to an understanding of the invention.**

Applicant further asserts that the allegedly missing drawings are not essential to an understanding of the invention, and a filing date based on the original filing without the drawings is requested.

Under 37 CFR §1.53(b), the requirements for an application are as follows:

(b) *Application filing requirements - Nonprovisional application.* The filing date of an application for patent filed under this section, except for a provisional application under paragraph (c) of this section or a continued prosecution application under paragraph (d) of this section, is the date on which a specification as prescribed by 35 U.S.C. 112 containing a description pursuant to § 1.71 and at least one claim pursuant to § 1.75, and any drawing required by § 1.81(a), are filed in the Patent and Trademark Office. [emphasis by underlining added; italics are in original]

Under 37 CFR §1.81(a), the requirement for drawings is as follows:

(a) The applicant for a patent is required to furnish a drawing of his or her invention where necessary for the understanding of the subject matter sought to be patented ... [emphasis by underlining added]

The present application is directed to methods for tissue augmentation using polymers having specific properties. The polymers are modifications of similar materials that have been patented by the laboratories of the present inventor; see for example, paragraphs [0007-0008] on page 3 of the specification. All of the patents (and thus all of the drawings therein) are incorporated by reference into the specification (see paragraph [000219] on page 54 of the present specification as well as many specific incorporation statements). None of the allegedly missing drawings referred to in the original filing are required to understand the invention, which is primarily chemical in nature.

Figures 1-8 and 10 are nucleotide and amino acid sequences that are set forth in the Specification and/or set forth in the Sequence Listing that was deposited with the application on April 23, 2001. Figure 9 is a representation of the results of testing the polymers used in the invention and is intended to show the "mass spectra plot" of two polymers (paragraph [00033] on page 8 and paragraph [000119] on page 65 of the specification). As such, the drawings merely supplement the Sequence Listing and the descriptions in the specification to make a visual presentation of the words used elsewhere in the specification.

Because the drawings are not essential, the filing date of this applications should be

officially granted as April 23, 2001, the day on which the specification was actually filed.

Summary and Request

The requirements for granting an official filing date have been met in view of the foregoing remarks and attached exhibits demonstrating (1) that the drawings were indeed deposited with the Patent Office with the application on April 23, 2001, as evidenced by the Return Receipt Postcard (Exhibit B) and, in the alternative, (2) the non-essential nature of the allegedly missing drawings and the resulting completeness of the application.

Accordingly, Applicant respectfully requests that the filing the date of April 23, 2001, be granted for this application and that the petition fee be refunded.

A check in the amount of \$130.00 to cover the petition fee under 37 CFR 1.17(i) is enclosed.

[X] The Commissioner is hereby authorized to charge any underpayment of the following fees associated with this communication, including any necessary fees for extension of time, or credit any overpayment or refund of petition fee to Deposit Account No. 03-3117:

[X] Any filing fees under 37 CFR 1.16 including fees for the presentation of extra claims.

[X] Any patent application processing fees under 37 CFR 1.17.

Respectfully submitted,  
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